

STATE OF NEW MEXICO
BEFORE THE SECRETARY OF ENVIRONMENT

IN THE MATTER OF THE APPLICATION OF
WESTERN WATER AND POWER PRODUCTION LLC
FOR AN AIR QUALITY CONSTRUCTION PERMIT FOR
THE ESTANCIA BASIN BIOMASS POWER GENERATION PLANT

No. AQCA 06-42 (P)



HEARING OFFICER'S REPORT

INTRODUCTION

Western Water and Power Production LLC (Applicant) seeks approval to construct and operate a 35 megawatt biomass power generation plant to be located on a fifty-acre property on State Road 542, approximately six miles south of Estancia in Torrance County, New Mexico.

The New Mexico Environment Department (NMED) Air Quality Bureau (AQB) supports the approval of the permit allowing construction and operation of the plant with conditions necessary to protect human health and welfare and the environment.

The matter was heard on March 13 and April 10, 2007, by Felicia Orth, Department Hearing Officer, in Estancia, New Mexico. The Bureau was represented by Eric Ames of the Department's Office of General Counsel. Mr. Ames was joined by several employees of the AQB, including permitting section manager Lester Drapela, permitting specialist Lawrence Alires and air modeling section manager Sufi Mustafa.

The Applicant was represented by David Cohen of Cohen and Cohen. Mr. Cohen was joined by Jack Maddox and Ralph Williams, engineering and environmental consultants. Bryan Bird entered an appearance for Forest Guardians; Mr. Bird was joined by Howard Gebhart, an environmental consultant.

There was substantial public comment and cross-examination of the witnesses presented by the parties, including Kathy McCormick, Margarita Hibbs, Bud Latven, Jock Finley, Chuck Ring, Marilyn Conway, Jan Moore, Jan Eshleman, Paul Davis, Brent Racher, John Wright, Martin Hibbs, Peggy Norton, Tami Brunk, David Heddens, Ann Adams and Annabelle Linhart.

The record proper includes, *inter alia*, the application for air quality permit; the notice of completeness determination; notice of docketing; notice of public hearing in English and in Spanish; notices of intent to present technical testimony (NOIs); the administrative record index filed by the Bureau, with subsequent supplements; notices of filing and affidavits of publication; correspondence; the hearing transcript in two volumes; hearing exhibits as noted in the transcript and as attached to the NOIs; written public comment and other documents submitted at the hearing; the notice of transcript filing; post-hearing submittals from the Applicant and the Bureau, and from the Forest Guardians; and this Report.

The hearing took place over the course of two afternoons and one evening in the Estancia Community Center, and was conducted in accordance with 20 NMAC 1.4, the Department's Permitting Procedures. The sign-in sheets reflect attendance of approximately 70 people on March 13, and 20 people on April 10.

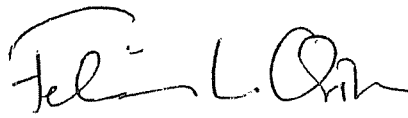
RECOMMENDATION

The Applicant and the Bureau submitted a joint statement of proposed findings of fact and conclusions of law following the hearing. Forest Guardians submitted an exception only to proposed conclusion of law number 8, concerning the applicability of

20.2.74 NMAC-Prevention of Significant Deterioration, based solely on the plant's use of natural gas to start the boiler.

The Secretary has requested that the hearing record be forwarded from the Hearing Officer without further proposed findings and conclusions or a recommended final order. Pursuant to 20.1.4 NMAC Section 500.C(2), the Secretary has instructed that no comment will be accepted on this Report.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Felicia L. Orth', written over a horizontal line.

FELICIA L. ORTH
Hearing Officer